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UNITED STATES OF AMERICA.





REPORT

OF THE

COMMITTEE ON THE LATE DUEL.

The Committee appointed to investigate the causes which led to the death of the Hon. Jonathan Cilley, late a member of the House of Representatives, and the circumstances connected therewith, and to inquire whether there has been, in the case alluded to, a breach of the privileges of the House, and to whom were referred sundry memorials upon the subject, now ask leave to submit their

REPORT:

In discharging the trust committed to them by the House of Representatives, the committee have endeavored implicitly to obey its order, neither stopping short, on the one hand, of the full measure of the duty imposed upon them, nor transcending its just limits on the other. They were of the opinion that the investigation was instituted solely for the maintenance of the privileges of the House. It was not within the province of the House of Representatives to investigate the causes which led to the death of one of its members, or the circumstances which attended it, with a view to the punishment of any offender for a high crime or misdemeanor. That belongs, in every case, exclusively to the courts of law. Senators and Representatives are not privileged from arrest in cases of "treason, felony, and breach of the peace;" and it is a constitutional provision, that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence." The inquiry, therefore, is directed to one object only—the maintenance of the privileges of the House; and the question is, what, in that view, were the causes which led to the death of Mr. Cilley, and the circumstances connected therewith, and did they involve a breach of those privileges?

In pursuing this investigation, the committee have examined all whose testimony, there was reason to believe, might be material; and Messrs. Graves, Wise, and Jones, members of the House, were permitted to attend, and to examine and cross-examine the witnesses; and the same leave was extended to Mr. Menefee, of the House, and to Mr. Pierce, of the Senate, at their request. The entire mass of the testimony is now submitted as a part of this report. One witness, Daniel Jackson, of the city of New York, who was summoned to attend, and called upon to testify, has neglected to obey the requisition, though he appeared before the committee, and interrogatories were put to him; but, from the position in which he stood, and the disclosures of another witness, it was not thought

worth the time or attention of the House or of the committee to notice him further.

The late Jonathan Cilley, a member of the House from the State of Maine, fell by the hand of William J. Graves, a member of the House from the State of Kentucky, in a duel fought with rifles, near the boundary line between the District of Columbia and the State of Maryland, on Saturday, the 24th of February last.

The causes which led to his death are intimately connected with the proceedings of this House. On the 12th of February Mr. Wise, of Virginia, presented to the House a publication in the New York Courier and Enquirer, charging a member of Congress with corruption upon the authority of an anonymous writer under the signature of "the Spy in Washington;" and thereupon moved a resolution for the appointment of a select committee, with power to send for persons and papers, to inquire into the charge. Mr. Wise said: "The character of the authority upon which the charge is made, is vouched for as respectable and authentic by the editor of the Courier and Enquirer, in whose paper it appears, and the House is called upon to defend its honor and dignity against the charge."

Mr. Cilley addressed the House in opposition to the resolution. In the course of the debate he said "he said he knew nothing of this editor; but if it was the same editor who had once made grave charges against an institution of this country, and afterwards was said to have received facilities to the amount of some \$52,000 from the same institution, and gave it his hearty support, he did not think his charges were entitled to much credit in an American Congress." These words, spoken by Mr. Cilley in debate, were strictly in order, were pertinent to the subject under discussion, and "did not exceed the bounds and limits of his place and duty;" and though they implied a doubt inconsistent with unblemished honor and character in the person alluded to, yet Mr. Cilley was justified in the use of them, by a report of a committee of the House of Representatives, appointed on the 14th of March, 1832, to inspect the books and examine into the proceedings of the Bank of the United States. An extract from the report, made by the majority of the committee, and published by order of the House of Representatives, is hereunto annexed, in which it is stated, that "for sixteen months" the New York Courier and Enquirer "was warmly opposed" to the Bank of the United States; that on the 26th of March, 1831, and within less than nine months thereafter, the bank made three loans, amounting "to the sum of \$52,975, which consisted of notes drawn and endorsed by the editors only;" and that "on or about the 8th of April, 1831, it (the paper) changed its course in favor of the bank."

It was in reference to the facts contained in this

report, and published to the world by order of the House of Representatives, that Mr. Cilley spoke the words, which had been already recited; and for thus alluding to facts put forth in the published documents of the body of which he was a member, he was called in question by the editor of the New York Courier and Enquirer. James Watson Webb, on the 21st of February last, addressed a note to him, reciting those words, apprising him that the writer of it was the editor of that paper, and concluding with a demand of explanation, couched in very explicit terms.

GADSBY'S HOTEL,

Washington, February 21, 1838.

SIR: In the Washington Globe of the 12th instant, you are reported to have said, in the course of the debate which took place in the House of Representatives on that day, growing out of a publication made in the New York Courier and Enquirer—"He (you) knew nothing of this editor; but if it was the same editor who had once made grave charges against an institution of this country, and afterwards was said to have received facilities to the amount of some \$52,000 from the same institution, and gave it his hearty support, he did not think his charges were entitled to much credit in an American Congress."

I deem it my duty to apprise you, sir, that I am the editor of the paper in which the letter from the "Spy in Washington," charging a member of Congress with corruption, was first published; and the object of this communication is to inquire of you whether I am the editor to whom you alluded, and, if so, to ask the explanation which the character of your remarks renders necessary.

Very respectfully,

Your obedient servant,

J. WATSON WEBB.

To the HON. JONATHAN CILLEY.

This demand of explanation, under the circumstances which existed, was not susceptible of misinterpretation, and, the sequel proves, was not misunderstood. Mr. Graves was the bearer of this note, having read it, and being fully apprized of its contents, and tendered it to Mr. Cilley, in the hall of the House of Representatives, while the House was in session. Mr. Cilley declined to receive it, and thereupon a brief correspondence ensued, which terminated in the challenge and death of Mr. Cilley by the bearer of this note. The first note of Mr. Graves was delivered by himself to Mr. Cilley, on the same day on which he bore the note of Webb, that is, on Wednesday, the 21st of February, 1838, and should have borne that date. It is as follows:

HOUSE OF REPRESENTATIVES,

February 20, 1838.

In the interview which I had with you this morning, when you declined receiving from me the note of Colonel J. W. Webb, asking whether you were correctly reported in the Globe in what you are there represented to have said of him in this House, on the 12th instant, you will please say whether you did not remark, in substance, that in declining to receive the note, you hoped I would not consider it, in any respect, disrespectful to me; and that the ground on which you rested your declining to receive the note was distinctly this: That you could not consent to get yourself into personal

difficulties with conductors of public journals, for what you might think proper to say in debate upon this floor, in discharge of your duties as a representative of the people; and that you did not rest your objection, in our interview, upon any personal objections to Colonel Webb as a gentleman.

Very respectfully,

Your obedient servant,

W. J. GRAVES.

HON. JONATHAN CILLEY.

It will be observed that the note which Mr. Graves bore, is described by him as the note of Colonel J. W. Webb, asking whether Mr. Cilley was correctly reported in the Globe, in what he was there represented to have said in the House of Representatives, on the 12th instant. But it will be perceived that the note itself, though it is thus described by Mr. Graves whenever he speaks of it afterwards, does not contain that inquiry.

Mr. Cilley, on the same day, personally delivered to Mr. Graves the following note in reply:

HOUSE OF REPRESENTATIVES,

February 21, 1838.

The note which you just placed in my hands has been received. In reply, I have to state that in your interview with me this morning, when you proposed to deliver a communication from Colonel Webb, of the New York Courier and Enquirer, I declined to receive it, because I chose to be drawn into no controversy with him. I neither affirmed or denied any thing in regard to his character; but when you remarked that this course on my part might place you in an unpleasant situation, I stated to you, and now repeat, that I intended, by the refusal, no disrespect to you.

Very respectfully, your obedient servant,

JONA. CILLEY.

HON. W. J. GRAVES.

On Thursday, the day following, Mr. Graves sent his second note to Mr. Cilley, which was delivered to him in his seat, during the session of the House, by Mr. Menefee, of Kentucky, the latter accompanying its delivery with an expression of the hope that Mr. Cilley would perceive the propriety of relieving Mr. Graves from a position which was painful to him. Mr. Cilley remarked that the note should be attended to. It is as follows:

HOUSE OF REPRESENTATIVES,

February 22, 1838.

SIR. Your note of yesterday, in reply to mine of that date, is inexplicit, unsatisfactory, and insufficient. Among other things in this, that in your declining to receive Colonel Webb's communication, it does not disclaim any exception to him personally as a gentleman. I have, therefore, to inquire whether you declined to receive his communication on the ground of any personal exception to him as a gentleman or a man of honor? A categorical answer is expected.

Very respectfully,

WM. J. GRAVES.

HON. J. CILLEY.

Mr. Cilley, on the same day, returned the following reply, by Mr. Dnncan, of Ohio:

HOUSE OF REPRESENTATIVES,

February 22, 1838.

SIR: Your note of this date has just been placed in my hands. I regret that mine of yesterday was unsatisfactory to you; but I cannot admit the right

on your part to propound the question to which you ask a categorical answer, and therefore decline any further response to it.

Very respectfully,

HON. W. GRAVES. JONA. CILLEY.

On Friday, the 23d of February, Mr. Wise presented to Mr. Cilley, at his boarding house, a few minutes before 12 o'clock, m. a challenge from Mr. Graves.

WASHINGTON CITY, Feb. 23, 1833.

As you have declined accepting a communication which I bore to you from Colonel Webb, and as by your note of yesterday you have refused to decline on grounds which would exonerate me from all responsibility growing out of the affair, I am left no other alternative but to ask that satisfaction which is recognised among gentlemen. My friend, Hon. Henry A. Wise, is authorized by me to make the arrangements suitable to the occasion.

Your obedient servant,

WM. J. GRAVES.

HON. J. CILLEY.

On the evening of the same day, about the hour of 5 o'clock, p. m. Mr. Jones, the delegate from Wisconsin, delivered to Mr. Graves, in the room of Mr. Wise, and in his presence, an acceptance of the challenge:

WASHINGTON CITY, Feb. 23, 1833.

Your note of this morning has been received. My friend, Gen. Jones, will "make the arrangements suitable to the occasion."

Your obedient servant,

HON. W. J. GRAVES. JONA. CILLEY.

Mr. Jones immediately submitted the following propositions to Mr. Wise:

WASHINGTON, February 23, 1833.

SIR: Mr. Cilley proposes to meet Mr. Graves, at such place as may be agreed upon between us, to-morrow, at 12 o'clock, m. The weapons to be used on the occasion shall be rifles; the parties placed side to side at 80 yards distance from each other; to hold the rifles horizontally at arm's length, downwards; the rifles to be cocked, and triggers set; the words to be, "Gentlemen, are you ready?" After which, neither answering "No," the words shall be, in regular succession, "Fire—one, two, three, four." Neither party shall fire before the word "fire," nor after the word "four." The positions of the parties at the ends of the line to be determined by lot. The second of the party losing the position shall have the giving of the word. The dress to be ordinary winter clothing, and subject to the examination of both parties. Each party may have on the ground, besides his second, a surgeon, and two other friends. The seconds, for execution of their respective trusts, are allowed to have a pair of pistols each on the ground, but no other person shall have any weapon. The rifles to be loaded in the presence of the seconds. Should Mr. Graves not be able to procure a rifle by the time prescribed, time shall be allowed for that purpose.

Your very obedient servant,

GEORGE W. JONES.

HON. HENRY A. WISE.

About 9 o'clock, p. m. Mr. Wise replied:

WASHINGTON, February 23, 1833.

SIR: The terms arranging the meeting between Mr. Graves and Mr. Cilley, which you presented

to me this evening, though unusual and objectionable, are accepted; with the understanding that the rifles are to be loaded with a single ball, and that neither party is to raise his weapon from the downward horizontal position until the word "fire."

I will inform you, sir, by the hour of 11 o'clock, a. m. to-morrow, whether Mr. Graves has been able to procure a rifle, and, consequently, whether he will require a postponement of the time of meeting.

Your very obedient servant,

HENRY A. WISE.

HON. GEO. W. JONES.

About 8 o'clock, a. m. on the 24th, Mr. Jones left at Mr. Wise's room the following note, to wit:

WASHINGTON CITY, D. C.

February 24, 1833.

SIR: I will receive, at Doctor Reilly's, on F street, any communication you may see proper to make me, until 11 o'clock, a. m. to-day.

Respectfully, your obedient servant,

GEO. W. JONES.

HON. H. A. WISE.

DR. REILLY'S, F STREET,

February 24, 1833, 10 o'clock, a. m.

SIR: I have called at this place, in conformity with your note of this morning, to inform you that Mr. Graves has not as yet been able to procure a rifle and put it in order, and cannot be ready by 12 o'clock, m. to-day. He is desirous, however, to have the meeting to-day, if possible, and I will inform you by half-past 12 o'clock, m. to-day, what time to procure and prepare a weapon he will require.

Very respectfully, &c.

HENRY A. WISE.

HON. GEORGE W. JONES.

Afterwards, Mr. Jones left at Mr. Wise's room the following note, to wit:

WASHINGTON, 10 $\frac{1}{2}$, a. m.

February 24, 1833.

Your note, dated at 10 o'clock to-day, is received.

In reply, I have the pleasure to inform you that I have in my possession an excellent rifle, in good order, which is at the service of Mr. Graves.

Very respectfully, &c.

GEORGE W. JONES.

HON. H. A. WISE.

Afterwards, Mr. Jones sent to Mr. Wise's room the following note, to wit:

WASHINGTON,

February 24, 1833, 11, a. m.

SIR: Through the politeness of my friend, Doctor Donegan, I now tender to you, for the use of Mr. Graves, the rifle referred to in my note of 10 $\frac{1}{2}$, a. m. this morning.

Respectfully, your obedient servant,

GEORGE W. JONES.

HON. H. A. WISE.

And with this note a rifle and powder-flask, and balls, were left at Mr. Wise's room.

The rifle was procured by Mr. Jones, and sent by him to Mr. Wise, in accordance with a previous request of Mr. Wise, or in consequence of a conversation between them. Mr. Jones says it was in strict accordance with the request of Mr. Wise: and Mr. Wise says he had a conversation with Mr. Jones upon the subject, requested Mr. Jones to inform him where one could be obtained, and has no doubt that it was in consequence of this conversa-

tion that Mr. Jones sent the rifle, and that he acted with the best motive in sending it.

Mr. Wise having received the last note, called on Mr. Jones, and informed him that Mr. Graves had procured another rifle, and would be ready for the meeting at 3 o'clock, p. m. The parties met by arrangement on the road to Marlborough, in Maryland. Mr. Cilley was accompanied by his second, Mr. Jones, by Mr. Bynum of North Carolina, and Col. James W. Schanburg, as his friends, and by Dr. Duncan of Ohio, as his surgeon. Mr. Graves was attended by Mr. Wise, as his second, by Mr. Crittenden, Senator from Kentucky, and Mr. Menefee of Kentucky, as his friends, and by Dr. Foltz, of this city, as his surgeon; and all proceeded thence about 2 o'clock, p. m. to the place of meeting. Mr. Jones and Mr. Wise immediately marked off the ground. The line of fire was at right angles with the rays of the sun. The choice of positions fell by lot to Mr. Wise, and Mr. Jones had the giving of the word. Mr. Wise chose the position at the northwesterly end of the line. The distance was about ninety-two yards. There was a strong wind falling on the line of fire at an angle of about 45° against Mr. Cilley. The position of Mr. Graves was near a wood, partly sheltered by it, and that of Mr. Cilley was on higher ground, and in the open field. The calibre of Mr. Graves's rifle was nearly twice as large as that of Mr. Cilley's, and would receive a ball of about eighty to the pound; while the rifle of Mr. Cilley would receive a ball of about one hundred and thirty-two to the pound. Mr. Calhoun and Mr. Hawes, both members of the House from Kentucky, were at some distance off as spectators. Mr. Wise had two rifles on the ground, one of which, not being loaded, remained, by consent, in one of the carriages. The hack drivers were on the ground; and two other persons, (Grafton Powell and James F. Brown,) were present, without the consent of either party or their friends. Shortly after 3 o'clock, p. m. the parties exchanged shots, according to the terms of meeting. Mr. Cilley fired first, before he had fully elevated his piece; and Mr. Graves fired one or two seconds afterwards. Both missed. Mr. Graves could not have reserved his fire, had he been disposed to do so.

The friends assembled at the request of Mr. Wise, and Mr. Jones inquired of Mr. Wise whether his friend [Mr. Graves] was satisfied? Mr. Wise immediately said: "Mr. Jones, these gentlemen have come here without animosity towards each other; they are fighting merely upon a point of honor; cannot Mr. Cilley assign some reason for not receiving at Mr. Graves's hands Col. Webb's communication, or make some disclaimer which will relieve Mr. Graves from his position?" Mr. Jones replied: "While the challenge is impending, Mr. Cilley can make no explanations." Mr. Wise said: "The exchange of shots suspends the challenge, and the challenge is suspended for explanation." Mr. Jones, thereupon, went to Mr. Cilley and returned; and after a few words in regard to putting in writing what had been and might be said, Mr. Jones proceeded to say: "I am authorized by my friend, Mr. Cilley, to say, that in declining to receive the note from Mr. Graves, purporting

to be from Colonel Webb, he meant no disrespect to Mr. Graves, because he entertained for him then, as he now does, the highest respect and the most kind feelings; but that he declined to receive the note, because he chose not to be drawn into any controversy with Colonel Webb," or, "he refuses to disclaim disrespect for Colonel Webb, because he does not choose to be drawn into an expression of opinion as to him." Both expressions were used in the course of the conversation. After a consultation on each side, Mr. Wise said to Mr. Jones, "This answer leaves Mr. Graves precisely in the position in which he stood when the challenge was sent." From an examination of the evidence, it will be perceived that, although the language made use of by the persons present, in narrating what passed on this occasion, is not the same, there is yet no substantial difference between them. Mr. Cilley re-asserted the ground which he had assumed in the correspondence; that he declined to receive the note of Webb, because he chose to be drawn into no controversy with him; that he refused to disclaim any personal exception to Webb as a gentleman or man of honor, because he would neither affirm nor deny any thing in regard to his character; and that in declining to receive the demand of explanation, he had intended no disrespect to Mr. Graves. Mr. Cilley even went farther, and declared that he entertained for him the *highest respect and the most kind feelings*. The position of Graves was, therefore, not changed, except so far as the peril of life by Mr. Cilley in defence of his own position, and the subsequent voluntary avowal of the highest respect and the most kind feelings for the individual who had put him in jeopardy, may be supposed to have changed it.

Mr. Crittenden says, that it was now "urged on the part of Mr. Graves that Mr. Cilley ought to make some such explanation or declaration as had been proposed, for the satisfaction of Mr. Graves; while on the part of Mr. Cilley it was urged that Mr. Graves ought to be satisfied with the exchange of shots, without any such explanation or declaration." All the friends of Mr. Cilley urged that Mr. Graves should now be satisfied, and that the affair should now terminate, without requiring from Mr. Cilley any further concession beyond what he had already made. Doctor Foltz said he "thought the affair should end here; that there was no personal ill feelings between the parties; that they had both proved themselves men of honor and courage; and that Mr. Cilley's opinion of Colonel Webb could not be changed by the further exchange of shots or the receipt of wounds." Mr. Crittenden was understood, by nearly all present, to concur in these views, though it seems he did not intend so to be understood, but acquiesced with Mr. Wise and Mr. Menefee in insisting that the fight should go on, unless Mr. Cilley would make the concession which had been demanded. Accordingly the challenge was renewed, the parties resumed their positions, and again exchanged shots in the manner prescribed by the terms of meeting. Mr. Graves fired first, before he had fully elevated his piece; Mr. Cilley fired about two seconds afterwards. They both missed. Mr. Cilley could not have reserved his fire had he been disposed to do so. Mr. Jones, Mr. Bynum, Mr. Schaum-

burg, Doctor Foltz, Mr. Wise, and Mr. Fuller, thought, from the motions and appearance of Mr. Graves, that he was hit. He at once said, "I must have another shot." Mr. Wise says, "he positively, peremptorily, and repeatedly insisted upon another shot."

The seconds and friends again assembled, and the challenge was again withdrawn. Mr. Jones said, "Mr. Wise, my friend, in coming to the ground and exchanging shots with Mr. Graves, has shown to the world that, in declining to receive the note of Colonel Webb, he did not do so because he dreaded a controversy. He has shown himself a brave man, and disposed to render satisfaction to Mr. Graves. I do think that he has done so, and that the matter should end here." Mr. Wise replied, in substance: "Mr. Jones, Mr. Cilley has already expressed his respect for Mr. Graves, in the *written correspondence*, and Mr. Graves does not require of Mr. Cilley a certificate of character for Colonel Webb; he considers himself bound not only to preserve the respect due to himself, but to defend the honor of his friend, Colonel Webb." Mr. Graves only insists that he has not borne the note of a man who is not a man of honor and not a gentleman." The challenge was again renewed, and while the friends were loading the rifles, Mr. Wise and Mr. Jones walked apart, and Mr. Wise asked Mr. Jones "if Mr. Cilley could not assign the reason for declining to receive the note of Col. Webb, that he [Mr. Cilley] did not hold himself accountable to Colonel Webb for words spoken in debate?" Mr. Jones replied, that "Mr. Cilley would not assign that reason, because he did not wish to be understood as expressing the opinion whether he was or was not accountable for words spoken in debate." Mr. Wise then asked Mr. Jones whether "Mr. Cilley would not say that, in declining to receive the note of Colonel Webb, he meant no disrespect to Mr. Graves, either *directly* or *indirectly*," To which Mr. Jones replied affirmatively, adding, "Mr. Cilley entertains the highest respect for Mr. Graves, but declined to receive the note because he chose to be drawn into no controversy with Colonel Webb." Mr. Jones says that Mr. Wise took no exception to this answer, but continued to require other concessions, as stated, to be made. Mr. Wise says that in making that proposition he went beyond his instructions; and that the proposition and the response to it were not communicated to Mr. Graves, but were communicated both to Mr. Crittenden and to Mr. Menefee. Mr. Crittenden says he does not remember to have heard them, nor to have heard of them, during the progress of the contest, and that he does not remember to have given any advice or opinion upon them. Mr. Menefee remembers the proposition and reply, and positively or by acquiescence gave the advice that the reply, *thus qualified*, was but a reiteration, in substance, of the original ground assumed by Mr. Cilley, and held to be inadmissible by Mr. Graves. Mr. Wise had in his possession, on the ground, three written propositions, neither of which was exhibited, nor their substance submitted, in any other manner than as before stated.

Mr. Jones, Mr. Bynum, Mr. Schaumburg, Dr. Duncan, and Dr. Foltz, now objected, in the strongest language, against the further prosecution of the contest, and insisted that it should now cease;

and that Mr. Graves should declare himself satisfied. Mr. Crittenden was understood again, by nearly all present, to concur in these views; but it appears, from his testimony, that he acquiesced in the views of Mr. Wise and Mr. Menefee. They insisted that the fight should go on, unless Mr. Cilley would make the concessions which were demanded; either a direct disclaimer of any personal exception to James Watson Webb, as a gentleman and a man of honor, in declining to receive his note, or an indirect disclaimer, by placing the refusal to receive it upon the ground of privilege; both of which Mr. Cilley, in the correspondence and throughout the affair upon the field, had refused to do, and, persisting in it, had twice received the fire of his antagonist.

Immediately previous to the last exchange of shots, Mr. Wise said to Mr. Jones, "If this matter is not terminated this shot, and is not settled, I will propose to shorten the distance." To which Mr. Jones replied, "After this shot, without effect, I will entertain the proposition." Mr. Graves had directed Mr. Wise, if they missed repeatedly, to prevent a prolongation of the affair by proposing closer quarters; in consequence of which, Mr. Wise made the proposition, which would have aggravated the severity of the terms. The rifles being loaded, the parties resumed their stations, and fired the third time, very nearly together. Mr. Cilley was shot through the body. He dropped his rifle, beckoned to one near him, and said to him, "I am shot," put both his hands to his wound, fell, and in two or three minutes expired.

Early in the day on which he fell, an agreement was entered into between James Watson Webb, Daniel Jackson, and William H. Morell, to arm themselves, repair to the room of Mr. Cilley, and force him to fight Webb with pistols on the spot, or to pledge his word of honor to give Webb a meeting before Mr. Graves; and, if Mr. Cilley would do neither, to shatter his right arm. They accordingly took measures to ascertain whether Mr. Cilley was at his lodgings; and finding that he was not, they proceeded, well armed, to Bladensburg, where it was said the duel between Mr. Graves and Mr. Cilley was to take place. Before arriving there, it was agreed between Webb, Jackson, and Morell, that Webb should approach Mr. Cilley, claim the quarrel, insist on fighting him, and assure him that if he aimed his rifle at Mr. Graves, he [Webb] would shoot him [Mr. Cilley] on the spot. It was supposed by them that Mr. Graves or Mr. Wise, or some of the party, would raise a weapon at Webb, whereupon it was agreed that Webb should instantly shoot Mr. Cilley, and that they should then defend themselves in the best way they could. Not finding the parties at Bladensburg, they followed in pursuit to the old Magazine, and thence to the shore of the Potomac, near the arsenal, at Greenleaf's Point, whence, it being after 3 o'clock, p. m. they returned to the city, to await the result. "It is unnecessary to add," say they, in a statement drawn up by Webb, signed by Jackson and Morell, and published in the New York Courier and Enquirer, "what would have been the course of Col. Webb, if Mr. Graves, instead of Mr. Cilley, had been injured. Suffice it to say, that it was sanctioned by us; and however much we deplored it, we could not doubt but the extraordinary posi-

ion in which he would have been placed would have warranted the course determined upon." It is difficult to imagine what is here darkly shadowed forth, if it be not that, had Mr. Cilley survived the encounter with Mr. Graves, and had the latter suffered in it, it would then have been the fate of Mr. Cilley to have encountered an assassin.

Such were the material facts and circumstances which attended the death of Mr. Cilley. The committee, entertaining the opinion that the cause of the challenge was the cause of the death of Mr. Cilley, have sought for it where it should be found in the most authentic form, in the correspondence of the parties.

Mr. Cilley declined to receive the note of Mr. Webb, because he "chose to be drawn into no controversy with him." He placed his refusal to receive a demand for explanation of the words spoken by him in debate solely on the ground of his own *voluntary election*, without assigning any other reason. "He chose to be drawn into no controversy" with Webb. He declared, at the same time, that he neither affirmed nor denied anything in regard to Webb's character, in declining to receive the note. He declared further, that he had before stated, and now repeated, that he intended by the refusal no disrespect to Mr. Graves, and that he had said this *only in reply* to a remark of Mr. Graves, that this course might place him in an unpleasant situation.

Mr. Graves, in his second note, takes but one exception to this first note of Mr. Cilley. "It does not disclaim any exception to him (Webb) personally as a gentleman." He says: "Your note of yesterday, in reply to mine of that date, is inexplicit, unsatisfactory, and insufficient; among other things in this—that, in your declining to receive Colonel Webb's communication, it does not disclaim any exception to him, personally, as a gentleman." "I have, therefore," he adds, "to inquire whether you declined to receive his communication on the ground of any personal exception to him as a gentleman or a man of honor? A categorical answer is expected."

Mr. Cilley, in his second note, regrets that his first was unsatisfactory, but cannot admit the *right* of Mr. Graves to propound the question, and, therefore, he declines any further response to it.

It is difficult to conceive that Mr. Graves, upon this correspondence of Mr. Cilley, could have challenged him for *intending disrespect to Mr. Graves*; for any such intention was positively disclaimed, and, as appears, in a most unexceptionable and courteous manner, in reply to a suggestion of his own, which called for it; or for *affirming or denying anything in regard to the character of Webb*, in declining to receive his note; for any such affirmation or denial is also disclaimed, in equally positive terms. Mr. Cilley had declined to receive a call from James Watson Webb, for explanation of words spoken in debate in the House of Representatives, and had put his refusal solely on the ground that he chose to be drawn into no controversy with him; but he is pressed further, and interrogated beyond this limit, which he had assigned to himself, and a categorical answer is demanded to the question whether he declined on the ground of any personal exception to Webb as a gentleman or a man of honor. He denies the right to interro-

gate him in this manner for declining a call, which his right, and duty, as a member of the House of Representatives, and the just maintenance of the privileges of that body, required him to decline; and, denying the right to interrogate, he, therefore, refused to submit to answer any further. And it was because he refused to receive the note, and refused to answer any further, that he was challenged by another member of the same body.

This matter is not left open to inference or argument. The cause of the challenge appears in a manner which precludes all doubt. It is still further specified and avowed by Mr. Graves himself, in his own note, which contains the challenge. It is stated clearly, unequivocally, and with the utmost precision, and is assigned expressly, and in form, as the cause for which the challenge is given. "*As you have declined accepting a communication which I bore to you from Colonel Webb, and as by your note of yesterday you have refused to decline on grounds which would exonerate me from all responsibility growing out of the affair, I am left no other alternative but to ask that satisfaction which is recognised among gentlemen.*" Mr. Cilley, by his "note of yesterday," had refused to answer the question to which a "categorical answer" had been demanded: that is to say, "*whether he declined to receive Colonel Webb's communication on the ground of any personal exception to him as a gentleman or man of honor.*" The ground of challenge, therefore, is, by Mr. Graves himself, expressly stated to be, that Mr. Cilley *declined to receive the communication from Webb*, and, by his note of February 22^d, *refused to answer that question, touching the honor of Webb*. This was the open and avowed cause, set forth and presented to Mr. Cilley, by which he was guided, and upon which he acted, in a matter involving the utmost extremity of human responsibility. For this cause, and for this alone, he was challenged and fell by the hand of Mr. Graves; unless it be admissible to believe that, after all verbal communication had ceased between him and his antagonist, and the difference had assumed the form exclusively of a written correspondence between them, he was challenged and fell for a cause not set up in that correspondence, not put forth as a ground of complaint, not made known to him or his friends as a matter of grievance, and in regard to which, therefore, it may be believed, he was profoundly ignorant, and had no opportunity afforded him in any way of voluntary satisfaction or explanation.

Nor is there any thing in what subsequently occurred, as disclosed by the joint statement of the seconds, or the testimony of any witness, which gives color to a suggestion, that there was, at any time afterwards, a change of the ground of controversy.

No communication whatever, upon the subject of difference, took place between the principals, their respective seconds, or friends, after the challenge was given, before the first exchange of shots. Of course, no change of the ground of controversy could have occurred until after Mr. Cilley had received the fire of his antagonist, and had hazarded his life in defence of the position which he had assumed in the correspondence. After the first exchange of shots, as already shown, Mr. Cilley re-asserted his original position, and Mr. Wise in-

sisted that what was then said by Mr. Jones only placed "the affair upon the original grounds," and left "Mr. Graves precisely in the position in which he stood when the challenge was sent." There was, in fact, no change whatever in the position of the parties, except what arose from the circumstance that Mr. Cilley had given Mr. Graves the satisfaction demanded of an exchange of shots, and from the further circumstance that Mr. Cilley not only repeated the disclaimer that he had meant no disrespect to Mr. Graves, but positively avowed, also, that he entertained for him *the highest respect and the most kind feelings*.

In this state of the controversy the challenge is renewed, and Mr. Cilley again puts his life in jeopardy. The challenge being once more suspended, he again insists upon his original position, *that he had declined to receive the demand for explanation of the words spoken by him in debate, because he chose to be drawn into no controversy with Webb, and that he would assign no other reason*; and while, on the other hand, it was insisted for Mr. Graves that he considered himself bound not only to preserve the respect due to himself, but to defend the honor of his friend, Col. Webb, and that he only insisted "that he had not borne the note of a man who was not a man of honor and not a gentleman," Mr. Cilley replied affirmatively to a proposition submitted on the part of Mr. Graves, that in declining to receive the note, he meant no disrespect to Mr. Graves, either directly or indirectly; and declared that he entertained the highest respect for him, but declined to receive the note, because he chose to be drawn into no controversy with Col. Webb. He excluded, in direct and positive terms, every possibility of disrespect to Mr. Graves, directly or indirectly, and in effect only insisted on his right to decline a demand for explanation of words spoken in debate, because he chose to be drawn into no controversy upon the subject, without assigning any other reason. But he was interrogated for another reason, and another reason was demanded; and for resisting that demand the challenge was again renewed, and he fell a victim in defence of what he conceived to be his rights as an individual, or as a representative of the people in the House of Representatives.

The committee were disposed to pursue this inquiry in every form. Not content with tracing the cause of the challenge in the written correspondence, in the assignment of reasons for the challenge under Mr. Graves's own hand, and in the various propositions which were submitted on the field, from the beginning to the end of the contest, they proceeded to put to every witness who was believed to know anything upon the subject, the direct inquiry, whether "Mr. Graves or his second, at any time before Mr. Cilley fell, communicated to Mr. Cilley, his second, or attendant friends, that a question of veracity between Mr. Graves and Mr. Cilley was a point of difficulty to be adjusted?" Mr. Jones answered, "Certainly not to me, nor to Mr. Cilley, at any time, to my knowledge, either before or during the day the duel was fought. I did not hear of the existence of such a question until the Sunday or Monday after Mr. Cilley was killed. The written correspondence between Mr. Graves and Mr. Cilley does not show the existence

of any such question of veracity." Mr. Bynum answered, "I heard no such communication, directly or indirectly, from either Mr. Graves or his second, made or intimated to Mr. Cilley or any of his friends, before he fell." Mr. Schaumburg answered, "I did not understand that there was a 'question of veracity' between the parties, nor was there any conversation on the subject." Dr. Duncan answered, "They never did to my knowledge. I never heard the question of veracity assigned, during Mr. Cilley's life, as the cause of any difficulty." Mr. Pierce answered, "I never held any conversation with Mr. Graves, or 'his second or attendant friends,' in relation to the late fatal duel, nor did I ever hear, until subsequently to the 24th of February last, 'that any question of veracity between Mr. Graves and Mr. Cilley was a point of difficulty to be adjusted.'" Dr. Foltz answered, "They did not."

Mr. Wise answered, "I do not know what Mr. Graves may have communicated to Mr. Cilley at any time before he fell, as to a question of veracity between them. I presume they both knew what had passed between them verbally. I believe that I did state to Mr. Jones, or to other friends of Mr. Cilley, on the ground, that Mr. Graves said Mr. Cilley had assigned to him the reason for declining to receive the note of Col. Webb, that he did not choose to be held accountable for words spoken in debate. I think I so informed Mr. Jones when I asked him if Mr. Cilley could not assign this reason on the ground; but of this I am not positive." Mr. Crittenden answered, "Not that I know of. I know of no communication between any of these parties other than as before stated, so far as I now recollect. Whether those communications involve any such question it is not for me to decide; no such question was made, in terms, that I know of." Mr. Menefee answered, "Mr. Graves had no communication of any kind with Mr. Cilley, his second, or attendant friends, and of course did not communicate to them that such a question was a point of difficulty. Nor did the second of Mr. Graves, as far as I remember, make such a communication, except so far as may be implied from the propositions made by him, in connection with the correspondence, &c. One, at least, of the friends of Mr. Graves, in the presence of his second, made frequent attempts to direct the attention of the second and friends of Mr. Cilley to the difficulty which was presented by the terms of Mr. Graves's first note (giving his version of what Mr. Cilley had said) and the ground which Mr. Cilley had subsequently assumed. But it was not referred to, in terms, as a question of veracity. It was believed that Mr. Cilley had honorable grounds, which would be satisfactory to Mr. Graves, and at the same time compatible with the truth, which would elicit the object, without making directly such a question whilst efforts were pending to accommodate. Whether the views, thus expressed, were communicated to Mr. Cilley, I know not. For the character of what occurred on this point, so far as I participated in it, the committee are referred to my general statement."

Mr. Graves said to Dr. Foltz, on the way to the field, "That he had been the bearer of a note from Colonel Webb to Mr. Cilley, inquiring if Mr. Cilley had been correctly reported in the Globe. Mr. Cilley refused to receive the note, and declined giving his reasons, which implicated me, in consequence of which I challenged him, but I have no personal animosity towards him." Mr. Wise said on the field, "Mr. Jones, these gentlemen have come here without animosity towards each other, they are fighting merely upon a point of honor." "These men have nothing against each other; they are merely settling a point of honor."

This concurrent testimony of all, without exception, taken in connection with the written correspondence, the various propositions and answers on the field, and the further fact that Mr. Cilley had not been informed that Mr. Graves had undertaken to repeat to others any verbal communication between them, or that any misapprehension or misunderstanding existed between them on that subject, utterly repels the suggestion, that any question of veracity had arisen, or had been made, or was the cause of the challenge, or of the death of Mr. Cilley. Indeed, any misapprehension on that subject would have given no more just ground of animosity, and least of all of the highly vindictive feelings necessarily aroused by a question of veracity, than the very evident misapprehension which Mr. Graves labored under in regard to some parts of the note of James Watson Webb, of which he was the bearer.

The committee will not, in justice to Mr. Graves, harbor the belief, that there were ranking secretly in his bosom any vindictive or hostile feelings towards Mr. Cilley, growing out of any question of personal veracity, and prompting him to carry

on a deadly warfare under another pretext, not only without a direct and explicit disclosure of the real cause of difficulty, such as would have left no misapprehension on the mind of any one, but under circumstances which misled the other party and his friends, and left him, under that false impression, to the forfeit of his life.

The committee have, therefore, come to the conclusion, that the words spoken by Mr. Cilley in debate in the House of Representatives, the refusal of Mr. Cilley to receive a demand for explanation of those words, and his refusal to assign any other reason for it, than that he chose to be drawn into no difficulty upon the subject, were the causes which led to the death of Mr. Cilley, under the circumstances which have been substantially detailed.

It remains to inquire whether there has been a breach of the privileges of the House.

It is a breach of the highest constitutional privileges of the House, and of the most sacred rights of the people in the person of their representative, to demand, in a hostile manner, an explanation of words spoken in debate; to be the bearer of such a demand; to demand a reason for refusing to receive it, beyond the mere voluntary election of the member interrogated; or to demand, under any circumstances, any reason at all. No member can be questioned in a hostile way, and put to his plea, and yield to it, without subjecting himself to great disadvantages in the estimation of many, and impairing his influence and his usefulness as a member. It is a still more aggravated breach of the privileges of the House, and of the rights of the people in the person of their representative, to challenge a member, and to slay him in combat, for refusing to comply with any such demand. It is the highest offence which can be committed against either House of Congress; against the freedom of speech and of debate therein; against the spirit and the substance of that constitutional provision, that for any speech or debate in either House, the members shall not be questioned in any other place, and violates essentially the right of perfect immunity elsewhere for words spoken in debate here, which is essential to the independence of Congress, and to the existence of constitutional liberty. And when this offence is committed by a member, it calls for the exercise of the highest powers of the House to purge itself of the evil, to maintain effectually its rights and privileges, and to preserve inviolate this immunity, which is guaranteed by the Constitution, and not for the sake of the individual, but for his constituents and for the country.

The present case is without any circumstance of extenuation. A member of the House, in a manner most strictly parliamentary, on an occasion most appropriate, in language most decorous and moderate, in defence of the honor of the House against an anonymous and unfounded charge of corruption, had alluded to the published records of former proceedings with perfect truth and accuracy; had, in obedience to his duty, declined a hostile demand for explanation in a manner in which the committee can discover no cause of offence; had, respectfully, with expressions of regret, declined to admit the right to interrogate him further; had disclaimed all disrespect, directly or indirectly, towards his antagonist, and avowed for him the highest respect and the kindest feelings, and, after all this, avowed without hostility, and against the strongest protestations of others, he was required fatally to expose himself to the third discharge of a rifle. On the other hand, Mr. Graves, a member of the House, voluntarily and unnecessarily became the bearer of a demand upon another member in attendance, for explanation of words spoken in debate; he presented it in the House, while the House was in session; he demanded a reason for the refusal, beyond the voluntary election of that member to be drawn into no difficulty upon the subject; which being withheld, he then challenged him in this city, and slew him in this vicinity, while Congress was in session. Every step of Mr. Graves in this progress, involved him deeper and deeper in a breach of the privileges of the House, until their destruction was consummated in the person of Mr. Cilley. The eye of reason can discover, in the whole course of Mr. Cilley, no offence towards those who pursued him, except that given by alluding to the records of Congress, in the faithful and upright discharge of his duty as a member, which, justly, could have given no offence at all. Nor can his death be vindicated or excused by any circumstance whatsoever, not even by that custom, the relic of unenlightened and barbarous ages, which was formerly supposed to be a proof of some degree of physical courage, but is, in fact, a signal monument of the want of the higher attribute of moral courage; which has, in these modern times, degenerated into a game of chances and a scramble for undue advantages; which can furnish no criterion for truth, justice, or honor, and deals out its inflictions of misery most severely upon the unoffending and the helpless; which is deeply deplored by all men, even those who submit to it, and is forbidden, in every stage of it, by all law, human and divine.

It is not necessary, on the present occasion, to go into any consideration of the general power of the House to punish for breach of privilege; or to inquire into the origin and foundation of that power over contempts, which has been asserted by the

Parliament of Great Britain, from time immemorial, by every legislative body, by every judicial tribunal, from the highest to the lowest, and repeatedly, by one or the other House of Congress, and has been recognised as existing in the House of Representatives by the Supreme Court of the United States. Whether it be a power necessary to the continued existence of the legislative body, or a power necessary to the free exercise of its legislative functions, it is in either case a necessary power, strictly granted by the Constitution, and as fully granted as if it were literally expressed. But in the case of members, the Constitution has expressly granted the power to punish for disorderly conduct; and has, also, expressly granted the power, with the concurrence of two-thirds, to expel a member for any cause which two-thirds of the House may deem sufficient.

The committee, therefore, viewing the breach of the rights and privileges of the House, on the part of Mr. Graves, to have been an offence of this high character, against the vital principle of a deliberative assembly and of representative Government, feel constrained, by a sense of duty, to present to the House a resolution that he be expelled therefrom.

It has been decided by the House of Representatives, on a former occasion, that it was a breach of privilege to send a challenge to a member in attendance, or to be the bearer of such challenge. And it is equally so to act as second to the challenger. In the present instance it appears that Mr. Wise had no knowledge of the demand of explanation which was borne by Mr. Graves, and had never seen that paper until after the fatal catastrophe. But having been early consulted by Mr. Graves upon the first letter of Mr. Cilley, and concurred with him in his views of it, he bore the challenge to Mr. Cilley, and he acted throughout as the second of the challenger, advising and insisting that the fight should go on, until Mr. Cilley fell. The committee, therefore, deeming him deeply involved, under the circumstances which this case presents, in a breach of the privileges of the House, report a resolution that he deserves the decided censure of the House, and that he be censured accordingly.

Mr. Jones had no knowledge of the affair until the determination of Mr. Cilley had been formed as to the acceptance of the challenge, and the time, mode, weapon, and other preliminaries of the meeting. But he was the bearer of the acceptance, and acted throughout as the second of the challenged party; and it is the opinion of the committee that he was thereby involved in a breach of privilege, and that he be censured therefor.

In regard to the persons, not principal nor seconds, who were present on the field, and expressed their opinions at the request of the parties, without having advised, instigated, or procured the meeting, however they might be implicated in the courts of law, the committee entertain doubts how far they would be involved in a breach of privilege; and, under a strong conviction that the power of the House should be exercised, never in a doubtful case, always with moderation, they content themselves with presenting the facts and circumstances, so far as those persons are concerned, without proposing any action thereon.

The committee entertain no doubt that James Watson Webb has been guilty of a breach of the privileges of the House; but they also concur unanimously in the opinion, that if there be any real ground to believe that a conspiracy to assassinate actually existed, as set forth in that atrocious paper drawn up by him, signed by Daniel Jackson and William H. Morell, sworn to by the latter, and published in the New York Courier and Enquirer, he be left to the chastisement of the courts of law and of public opinion, and that the House will consult its own dignity and the public interests by bestowing upon him no further notice.

Resolved, That WILLIAM J. GRAVES, a member of this House from the State of Kentucky, in bearing to the late JONATHAN CILLEY, then a member of this House, the demand for explanation of words spoken in debate, demanding his reasons for declining to receive it, and challenging him, and engaging in a late duel with him, which terminated in his death, has been guilty of a breach of the privilege of this House.

And be it further resolved, That the said W. J. G. for said breach of privilege be, and hereby is, expelled from this House.

Resolved, That HENRY A. WISE, in bearing a challenge to the late JONATHAN CILLEY, then a member of this House, and acting as a second to the challenger in the duel, which terminated in the death of Mr. CILLEY, has been guilty of a breach of the privileges of this House, and that he deserves the decided censure of this House, and hereby is censured accordingly.

Resolved, That GEO. W. JONES, in acting as second to the challenged party, the late JONATHAN CILLEY, then a member of this House, in the duel which terminated in his death, has been guilty of a breach of the privileges of this House, and that he be therefor, and hereby is, censured accordingly by this House.













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